

Subsec. (b)(2)(C). Pub. L. 109-59, § 1802(b)(6), inserted “or Indian tribe” after “State”.

Subsec. (c)(1). Pub. L. 109-59, § 1802(c)(1), inserted “or Indian tribe” after “State”.

Subsec. (c)(3). Pub. L. 109-59, § 1802(c)(2), inserted “Indian tribe scenic byway,” after “improvements to a State scenic byway,” and “designation as a State scenic byway.”

Subsec. (c)(4). Pub. L. 109-59, § 1802(c)(3), struck out “passing lane,” before “overlook.”

Subsec. (e). Pub. L. 109-59, § 1802(d), inserted “or Indian tribe” after “State”.

### § 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

(a) GENERAL AUTHORITY.—The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

(b) GRANTS.—For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying—

(1) the amount authorized to carry out this section for the fiscal year; by

(2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) USE OF GRANTS.—A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) FEDERAL SHARE.—The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) PENALTY.—

(1) IN GENERAL.—On October 1, 2003, and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold from amounts apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) an amount equal to the amount specified in paragraph (2).

(2) AMOUNT TO BE WITHHELD.—If a State is subject to a penalty under paragraph (1), the Secretary shall withhold for a fiscal year from the apportionments of the State described in paragraph (1) an amount equal to a percentage of the funds apportioned to the State under paragraphs (1), (3), and (4) of section 104(b) for fiscal year 2003. The percentage shall be as follows:

(A) For fiscal year 2004, 2 percent.

(B) For fiscal year 2005, 4 percent.

(C) For fiscal year 2006, 6 percent.

(D) For fiscal year 2007, and each fiscal year thereafter, 8 percent.

(3) FAILURE TO COMPLY.—If, within 4 years from the date that an apportionment for a State is withheld in accordance with this subsection, the Secretary determines that the State has enacted and is enforcing a law de-

scribed in subsection (a), the apportionment of the State shall be increased by an amount equal to the amount withheld. If, at the end of such 4-year period, any State has not enacted or is not enforcing a law described in subsection (a) any amounts so withheld from such State shall lapse.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, \$110,000,000 for fiscal year 2003, \$110,000,000 for fiscal year 2004, and \$110,000,000 for fiscal year 2005 \$91,315,068 for the period of October 1, 2004, through July 30, 2005.<sup>1</sup>

(2) AVAILABILITY OF FUNDS.—Notwithstanding section 118(b)(2), the funds authorized by this subsection shall remain available until expended.

(Added Pub. L. 105-178, title I, § 1404(a), June 9, 1998, 112 Stat. 240; amended Pub. L. 108-88, § 6(a)(2), Sept. 30, 2003, 117 Stat. 1119; Pub. L. 108-202, § 6(b), Feb. 29, 2004, 118 Stat. 483; Pub. L. 108-224, § 5(b), Apr. 30, 2004, 118 Stat. 632; Pub. L. 108-263, § 5(b), June 30, 2004, 118 Stat. 703; Pub. L. 108-280, § 5(b), July 30, 2004, 118 Stat. 881; Pub. L. 108-310, § 6(a)(2), Sept. 30, 2004, 118 Stat. 1152; Pub. L. 109-14, § 5(a)(2), May 31, 2005, 119 Stat. 329; Pub. L. 109-20, § 5(a)(2), July 1, 2005, 119 Stat. 351; Pub. L. 109-35, § 5(a)(2), July 20, 2005, 119 Stat. 384; Pub. L. 109-37, § 5(a)(2), July 22, 2005, 119 Stat. 399; Pub. L. 109-40, § 5(a)(2), July 28, 2005, 119 Stat. 416; Pub. L. 109-59, title I, § 1407(a), (b), Aug. 10, 2005, 119 Stat. 1231.)

#### AMENDMENTS

2005—Subsec. (e). Pub. L. 109-59, § 1407(a)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 109-40 substituted “\$91,315,068 for the period of October 1, 2004, through July 30, 2005” for “\$90,410,958 for the period of October 1, 2004, through July 27, 2005”.

Pub. L. 109-37 substituted “\$90,410,958 for the period of October 1, 2004, through July 27, 2005” for “\$89,100,000 for the period of October 1, 2004, through July 21, 2005”.

Pub. L. 109-35 substituted “\$89,100,000 for the period of October 1, 2004, through July 21, 2005” for “\$88,000,000 for the period of October 1, 2004, through July 19, 2005”.

Pub. L. 109-20 substituted “\$88,000,000 for the period of October 1, 2004, through July 19, 2005” for “\$82,500,000 for the period of October 1, 2004, through June 30, 2005”.

Pub. L. 109-14 substituted “\$82,500,000 for the period of October 1, 2004, through June 30, 2005” for “\$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

Subsec. (f). Pub. L. 109-59, § 1407(a)(1), redesignated subsec. (e) as (f).

Subsec. (f)(1). Pub. L. 109-59, § 1407(b), substituted “2004, and \$110,000,000 for fiscal year 2005” for “2004, and”.

2004—Subsec. (e)(1). Pub. L. 108-310 struck out “and” after “2003,” and inserted “, and \$73,333,333 for the period of October 1, 2004, through May 31, 2005” before period at end.

Pub. L. 108-280 substituted “\$110,000,000 for fiscal year 2004” for “\$100,000,000 for the period of October 1, 2003, through July 31, 2004”.

Pub. L. 108-263 substituted “\$100,000,000 for the period of October 1, 2003, through July 31, 2004” for “\$90,000,000 for the period of October 1, 2003, through June 30, 2004”.

<sup>1</sup> So in original. The words “\$91,315,068 for the period of October 1, 2004, through July 30, 2005” probably should not appear.

Pub. L. 108-224 substituted “\$90,000,000 for the period of October 1, 2003, through June 30, 2004” for “\$70,000,000 for the period of October 1, 2003, through April 30, 2004”.

Pub. L. 108-202 substituted “\$70,000,000 for the period of October 1, 2003, through April 30, 2004” for “\$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

2003—Subsec. (e)(1). Pub. L. 108-88 struck out “and” after “2002,” and inserted before period at end “, and \$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

**WITHHOLDING OF FUNDS FOR FAILURE TO ENACT AND ENFORCE LAWS RELATING TO DRIVING WHILE INTOXICATED**

Pub. L. 106-346, §101(a) [title III, §351], Oct. 23, 2000, 114 Stat. 1356, 1356A-34, directed the Secretary to withhold a percentage, beginning in fiscal year 2004, of the amount required to be apportioned for Federal-aid highways to any State under pars. (1), (3), and (4) of section 104(b) of this title, if a State had not enacted and was not enforcing a provision described in section 163(a) of this title, and provided for increase of the apportionment by an amount equal to such reduction if within 4 years from the date of the reduction the Secretary determined that such State had enacted and was enforcing a provision described in section 163(a) of this title, prior to repeal by Pub. L. 109-59, title I, §1407(c), Aug. 10, 2005, 119 Stat. 1231.

**§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **ALCOHOL CONCENTRATION.**—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) **DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.**—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) **LICENSE SUSPENSION.**—The term “license suspension” means the suspension of all driving privileges.

(4) **MOTOR VEHICLE.**—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) **REPEAT INTOXICATED DRIVER LAW.**—The term “repeat intoxicated driver law” means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

(A) receive a driver’s license suspension for not less than 1 year;

(B) be subject to the impoundment or immobilization of each of the individual’s motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

(C) receive an assessment of the individual’s degree of abuse of alcohol and treatment as appropriate; and

(D) receive—

(i) in the case of the second offense—

(I) an assignment of not less than 30 days of community service; or

(II) not less than 5 days of imprisonment; and

(ii) in the case of the third or subsequent offense—

(I) an assignment of not less than 60 days of community service; or

(II) not less than 10 days of imprisonment.

**(b) TRANSFER OF FUNDS.—**

(1) **FISCAL YEARS 2001 AND 2002.**—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(2) **FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.**—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) **USE FOR HAZARD ELIMINATION PROGRAM.**—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 148.

(4) **FEDERAL SHARE.**—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(5) **DERIVATION OF AMOUNT TO BE TRANSFERRED.**—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

(A) The apportionment of the State under section 104(b)(1).

(B) The apportionment of the State under section 104(b)(3).

(C) The apportionment of the State under section 104(b)(4).

**(6) TRANSFER OF OBLIGATION AUTHORITY.—**

(A) **IN GENERAL.**—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid high-